

MONTANA LEGISLATIVE HISTORY

Chapter 85 19 95

Bill H _____ S. 48

Original bill & history ✓ c

H. Committee on Nat. Res

Hearing Date(s) 2-8 ✓ c

2-10 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Nat. Res

Hearing Date(s) 1-9 ✓ c

1-20 ✓ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

EFFECTIVE DATE: 02/06/95

INTRODUCED BY SWYSGOOD
ALLOW FOR STAGGERED REGISTRATION OF CERTAIN FLEET INTERSTATE
COMMERCIAL VEHICLES

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

1/02	FISCAL NOTE REQUESTED		
1/03	INTRODUCED		
1/03	FIRST READING		
1/03	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/07	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/12	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	47	0
1/23	3RD READING PASSED	49	0

	TRANSMITTED TO HOUSE		
1/24	FIRST READING		
1/24	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/30	HEARING		
2/03	COMMITTEE REPORT—BILL CONCURRED		
2/04	2ND READING CONCURRED	97	0
2/06	3RD READING CONCURRED	99	0

RETURNED TO SENATE
SIGNED BY PRESIDENT
SIGNED BY SPEAKER
TRANSMITTED TO GOVERNOR
SIGNED BY GOVERNOR
CHAPTER NUMBER 42
EFFECTIVE DATE: 01/01/96

INTRODUCED BY KEATING
REVISE AIR QUALITY LAWS TO ALLOW DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES TO EXTEND TIME FOR NOTIFYING AN
APPLICANT FOR A CONSTRUCTION PERMIT OF APPROVAL OR DENIAL
OF AN APPLICATION

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES

1/03	INTRODUCED		
1/03	FIRST READING		
1/03	REFERRED TO NATURAL RESOURCES		
1/09	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	50	0
1/26	3RD READING PASSED	49	0

	TRANSMITTED TO HOUSE		
1/27	FIRST READING		
1/27	REFERRED TO NATURAL RESOURCES		
2/08	HEARING		
2/13	COMMITTEE REPORT—BILL CONCURRED		
2/28	2ND READING CONCURRED	81	16
3/01	3RD READING CONCURRED	79	20

RETURNED TO SENATE
SIGNED BY PRESIDENT
TRANSMITTED TO GOVERNOR
SIGNED BY SPEAKER

3/07 SIGNED BY GOVERNOR
CHAPTER NUMBER 85
EFFECTIVE DATE: 10/01/95

INTRODUCED BY SWYSGOOD, ET AL.
EXEMPT FROM PROPERTY TAXATION TRAILERS AND SEMITRAILERS THAT
ARE REGISTERED THROUGH A PROPORTIONAL REGISTRATION
AGREEMENT

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

1/04	INTRODUCED		
1/04	FIRST READING		
1/04	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/05	FISCAL NOTE REQUESTED		
1/12	HEARING		
1/12	FISCAL NOTE RECEIVED		
1/12	FISCAL NOTE PRINTED		
1/20	REVISED FISCAL NOTE PRINTED		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/26	2ND READING PASSED	48	0
1/27	3RD READING PASSED	49	0

	TRANSMITTED TO HOUSE		
1/30	FIRST READING		
1/30	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/06	HEARING		
2/10	COMMITTEE REPORT—BILL CONCURRED		
2/28	2ND READING CONCURRED	93	5
3/01	3RD READING CONCURRED	90	9

RETURNED TO SENATE
SIGNED BY PRESIDENT
TRANSMITTED TO GOVERNOR
SIGNED BY SPEAKER
SIGNED BY GOVERNOR
CHAPTER NUMBER 88
EFFECTIVE DATE: 01/01/96

INTRODUCED BY WELDON
REVISE LAWS RELATING TO MEMBERSHIP AND MEETINGS OF AIR
POLLUTION CONTROL ADVISORY COUNCIL

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES

1/04	INTRODUCED		
1/04	FIRST READING		
1/04	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/11	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/17	2ND READING DO PASS MOTION FAILED	23	26
1/17	MOTION FAILED TO INDEFINITELY POSTPONE ON 2ND READING	19	30
1/17	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/27	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
1/28	ADVERSE COMMITTEE REPORT ADOPTED	32	12

INTRODUCED BY KLAMPE
INCREASE PENALTY FOR VIOLATION OF FUEL CONSERVATION SPEED
LIMIT FROM \$5 TO \$26.85

1/04 INTRODUCED
1/04 FIRST READING

SENATE BILL NO. 48

INTRODUCED BY Kentucky

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIR QUALITY LAWS TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO EXTEND THE TIME FOR NOTIFYING AN APPLICANT FOR A CONSTRUCTION PERMIT OF APPROVAL OR DENIAL OF AN APPLICATION; REVISING CERTAIN PROVISIONS OF THE AIR QUALITY LAWS TO CONFORM WITH FEDERAL CLEAN AIR ACT REQUIREMENTS; AND AMENDING SECTIONS 75-2-211, 75-2-403, AND 75-2-413, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(6) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(7) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (6) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(8) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if the department prepares the environmental impact statement; or

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (7), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. An additional 30-day extension may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(9) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(10) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 2. Section 75-2-403, MCA, is amended to read:

"75-2-403. Inspections. (1) The department or an authorized representative, for the purpose of ascertaining the state of compliance with this chapter or ~~rules and permits~~ a rule, order, or permit in force under ~~it this chapter~~, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which:

(a) an air contaminant source is located or is being constructed or installed;

(b) an emissions-related activity is being conducted; or

1 (c) records are kept as required under this chapter or a rule, order, or permit made or issued under
2 this chapter.

3 (2) A person may not refuse entry or access to an authorized representative of the department who
4 presents appropriate credentials when the department requests entry for purposes of inspection. A person
5 may not obstruct, hamper, or interfere with an inspection.

6 (3) The department or an authorized representative must be provided access and must be allowed
7 to copy, at reasonable times, any record that is required to be kept under this chapter or a rule, order, or
8 permit made or issued under this chapter.

9 (4) The department or an authorized representative may inspect, at reasonable times, any facility,
10 equipment, practices, or operations regulated or required under this chapter or a rule, order, or permit made
11 or issued under this chapter.

12 (5) The department or an authorized representative must be allowed to sample or monitor at
13 reasonable times, substances or parameters for the purpose of ensuring compliance with the provisions of
14 this chapter or a rule, order, or permit made or issued under this chapter.

15 ~~(3)(6)~~ At the owner's or operator's request, the owner or operator of the premises shall receive
16 a report stating all facts found ~~which~~ that relate to compliance status."

17
18 **Section 3.** Section 75-2-413, MCA, is amended to read:

19 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action.** (1) A person who violates any
20 provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under
21 this chapter is subject to a civil penalty not to exceed \$10,000 per violation. Each day of each violation
22 constitutes a separate violation. The department may institute and maintain in the name of the state any
23 enforcement proceedings under this section. Upon request of the department, the attorney general or the
24 county attorney of the county of violation shall petition the district court to impose, assess, and recover
25 the civil penalty. ~~The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.~~

26 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
27 or permit made or issued under ~~it~~ this chapter by injunction or other appropriate civil remedies.

28 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
29 issued under ~~it~~ this chapter may be brought in the district court of any county where a violation occurs or
30 is threatened if the defendant cannot be located in Montana.

(3) Money collected under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program."

-END-

SENATE NATURAL RESOURCES

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HJ0025	QUILICI, JOE		SUPPORT TECHNOLOGY FOR MINE WASTE IN BUTTE			
	2/21	3/10	CONCUR	VOTE:		3/13
HJ0026	CURTISS, AUBYN		RESOLUTION OPPOSING CLOSURE OF MISSOULA REGIONAL FOREST SERVICE OFFICE			
	2/27	3/10	CONCUR	VOTE:		3/21
SB0046	SWYSGOOD, CHUCK		GROUND WATER ASSESSMENT AND MONITORING PROGRAM FUNDING			
	1/04	1/09	PASS AS AMENDED	VOTE:		1/17
SB0048	KEATING, TOM		AN ACT AMENDING CERTAIN PROVISIONS OF THE MONTANA CLEAN AIR ACT			
	1/03	1/09	PASS AS AMENDED	VOTE:		1/24
SB0071	STANG, BARRY		REVISING THE PETROLEUM TANK RELEASE CLEAN UP LAWS			
	1/09	1/13	DO PASS	VOTE:		1/17
SB0078	GROSFIELD, LORENTS		WATER QUALITY PERMIT ENFORCEMENT, FEE, AND BONDING REVISIONS			
	1/09	1/16	PASS AS AMENDED	VOTE:		2/02
SB0128	JERGESON, GREG		SURCHARGE ON CERTAIN RESIDENTIAL IMPROVED LAND TO DEFRAY FIRE SUPPRESSION \$\$			
	1/13	1/18	PASS AS AMENDED	VOTE:		2/02
SB0137	BROOKE, VIVIAN		REVISING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT			
	1/14	2/10	TABLED ON 02/10	VOTE:		
SB0145	KEATING, TOM		RETURN PUBLIC DOMAIN TO STATE -- MT LAND REFORMATION ACT			
	1/16	2/06	DO PASS	VOTE:		2/11
SB0147	HERTEL, JOHN		STATE WATER PROJECT LAW REVISIONS			
	1/16	1/25	PASS AS AMENDED	VOTE:		2/10
SB0153	BROOKE, VIVIAN		CONFORM TO SAFE DRINKING WATER ACT; CREATE WELLHEAD PROTECTION PROGRAM			
	1/16	1/23	PASS AS AMENDED	VOTE:		2/02
SB0186	BECK, TOM		DSL ABANDONED MINE RECLAMATION AUTHORITY			
	1/18	1/25	DO PASS	VOTE:		2/02

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 9,
1995, at 1:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)

Members Excused: SEN. WILSON

Members Absent:

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 46, SB 48
Executive Action: SJR 2

{Tape: 1; Side: A}

HEARING ON SB 48

Opening Statement by Sponsor:

SENATOR TOM KEATING, SENATE DISTRICT NO. 5 from Billings, said
the Legislative Auditor does financial and performance audits for

all government agencies and quite frequently discovers flaws in the laws that are different from the department practice, or the department action doesn't coincide with the statutes. He said SB 48 is a housekeeping bill. The legislative auditor pointed out that the time period for permitting was not conducive to the proper functioning of the Air Quality Division. In order to speed up the permitting process there are some amendments to the time period that allows the applicant to delay the permit if he would need more time. SB 48 also addresses the matter of inspections allowing the department access to various records pertaining to emission controls. **SEN. KEATING** stated he was not clear on the civil & criminal penalties in the bill, but thought it meant eliminating criminal penalties and allowing civil penalties.

Proponents' Testimony:

Jeffrey Chaffee, Air Quality Division, Department of Health and Environmental Sciences, said SB 48 is a housekeeping bill meant to bring the state statutes up to date in line with the Federal Clean Air Act. **EXHIBIT 1.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MACK COLE asked **Mr. Chaffee** if he would give an example of the meaning in Section 1. that states "whereby you need extensions."

Jan Sensibaugh, Air Quality Division. said a preliminary determination is issued that states all the conditions of the limitations in the permit and asks for public input. There have been instances where a company has not agreed with the emission limitations, and the company may want to submit additional information so as to revise the department's ruling. She said there are times that it takes more than the 15 days allowed to get the information to the department. When enforcing conditions, testing or actual monitoring of equipment may be required, a technical determination may require some technology and the company may ask for an explanation as to the determination. **Ms. Sensibaugh** said SB 48 allows the company more time to gather additional information for review.

SEN. MIKE FOSTER asked **Mr. Chaffee** about Section 2 (**EXHIBIT 1**) where he referred to "records." He asked what specific records would be reviewed.

Mr. Chaffee said data from the source covering emissions from the stack including the amount of fuel burned and various parameters that are tied to the permit conditions. Details of production records, etc. would not be included.

SEN. FOSTER asked if it was specifically written what can or cannot be examined. **Mr. Chaffee** replied it wasn't written anywhere what could or could not be examined, but as a matter of practice, in a compliance inspection the department deals with permit conditions relating to air quality. The department may request further data and the facility has a right to inquire why the additional information is requested.

SEN. FOSTER said on Page 4 of SB 48, Lines 6-14 there is a listing of several provisions. References were made to Title 5, the Federal Clean Air Act, and wondered if the wording in Lines 3-5 was from Title V.

David Rusoff, Attorney, Department of Health, Air Quality Division, said most of the language in the bill came out of the EPA Inspection statute. That statute says that "the administrator or authorized representative upon presentation of his credentials, shall have the right of entry to upon or through any premises of such a person or in which any records required to be maintained are located, and at reasonable times, access to copy any records, inspect any monitoring equipment, or method required under Paragraph 1 and sample any emissions that the owner or operator of such source is required to sample." Some of the language may have also come from the Federal Regulations.

SEN. FOSTER asked if there was anything in Lines 3-5 that the department has added in the bill that isn't in Title V. **Mr. Rusoff** said nothing was added into the bill that wasn't a federal requirement. Sec. 114 of the Federal Clean Air Act which refers to the administrator of EPA states "... may at reasonable times have access to copy records and to inspect and sample any monitoring equipment or method."

SEN. BROOKE asked **Mr. Rusoff**, with regard to **SEN. FOSTER'S** concern, would it be correct in assuming that Page 4, Line 10 guarantees that the department or authorized representative would be allowed to examine only the facility, equipment, practices, or operations regulated by the permit process. **Mr. Rusoff** said that is correct, the only authority the department has under the statute is to inspect the facility's records they are required to keep and maintain under the statute or a permit condition.

SEN. KEATING asked **Mr. Rusoff** if he knew that the language on Page 4, Lines 6-14 that says you can look at the records, are required under the permitting process, and if the department was

ever refused any information in the absence of this language in the department's inspection. Mr. Chaffee replied he didn't believe so.

CHAIRMAN GROSFIELD said each reference refers to Chapter 2, "anything kept by virtue of Chapter 2 or rule order permit issued under this Chapter..." He said it doesn't mention any financial records or permit records.

CHAIRMAN GROSFIELD asked Mr. Chaffee if it was his intention to issue as many 30 day extensions as were appropriate. Mr. Chaffee replied if the permit applicant asks for more time, SB 48 would allow the extension. CHAIRMAN GROSFIELD said Page 3, Line 4 states: "An additional 30-day extension may be granted by the department on request of the applicant." He said on Page 4, Section 3, it states. "both civil and criminal penalties." He said the department needs that authority because the EPA also has that authority. He asked if both the EPA and the department had ever filed civil and criminal penalties against a company. Mr. Chaffee replied it is a primacy issue under Title V, and in some instances it may be necessary to file both criminal and civil cases.

CHAIRMAN GROSFIELD asked if EPA had already approved the primacy. Mr. Chaffee replied it was submitted to EPA about a year ago and expect approval by April 6 of this year.

SEN. KEATING stated to be served with a criminal penalty you have to knowingly and willfully violate the law. To prove that person knowingly caused that exceedence is much more difficult to prove and criminal penalty can only be assessed on that basis. He said criminal penalty is only for the bad guys.

Closing by Sponsor:

SEN. KEATING said he would appreciate DO PASS on SB 48.

{Tape: 1; Side: B}

HEARING ON SB 46

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, Senate District 17, Madison, Gallatin, and Silver Bow Counties, stated SB 46 is before the committee members to correct an oversight in SB 94 of the 1991 Legislative Session that established the funding for the Ground Water Assessment Program for the Bureau of Mines. That bill addressed increased fees for the Ground Water Assessment Tax fund. He stated there were two sections of the statute that relate to that assessment.

1-9-95

SEN:1995
wp.rollcall.man
CS-09

TESTIMONY ON SENATE BILL NO. 48

Jeffrey T. Chaffee
Air Quality Division
Department of Health and Environmental Sciences

Mr. Chairman, members of the committee, my name is Jeff Chaffee and I represent the Department of Health and Environmental Sciences. SB 48 makes changes to the department's air quality permitting and enforcement authority to remedy some of the problems identified by the legislative auditor during a performance audit and EPA through review of Montana's operating permit program.

The changes include: extending the 60-day criteria for issuing a department determination; amending the inspection statute to provide for the right of entry to any premises in which required records are located, the right to copy records and the right to inspect monitoring equipment and methods and to sample emissions; and deleting the "in lieu of" language in the civil penalty statute.

Section 1. The proposed amendment to 75-2-211 addresses a recommendation of the Legislative Auditor's performance audit of the Air Quality Bureau. The legislative auditor identified that the department needed to address the following problem: Once the department issues a preliminary determination (PD) to the applicant which specifies intended air quality permit conditions and requirements, there is a 15-day response period for comments on the PD. If no comments are received, a department determination (DD) which finalizes the permit conditions and requirements is issued. The department has 60 days from the receipt of a complete application to issue the DD. If there are disagreements on the

conditions and requirements in the PD, the department attempts to negotiate and resolve the issues prior to the 60-day milestone since once the DD is issued the only recourse for the applicant is an appeal to the Board of Health and Environmental Sciences. However in some instances the department is unable to resolve the issues within the mandated time period but because legitimate negotiation activities are taking place and it is in the interest of all parties to continue the negotiation and not appeal to the Board, the 60-day time period is missed. The AQD is adding language to provide for a mutually agreed upon 30-day extension to the current 60-day criteria for issuing a department determination with additional 30-day extensions granted upon request of the applicant. The Air Quality Division met with the Clean Air Act Advisory Council (CAAC), a group comprised of regulated industry, environmental groups, small business and the general public, to discuss this legislative change on November 3, 1994. Everyone agreed this was necessary.

Section 2. In order to receive EPA's approval of the state's operating permit program, and maintain primacy for air quality activities in the state, section 75-2-403 needs to be amended. The changes to 75-2-403 are necessary to allow the department to determine that the source is in compliance with all applicable requirements and provide the department, or an authorized representative, access to information required under this chapter, or a rule, order or permit issued under this chapter. Currently the state statute provides only for inspections where an air contaminant source is located or being constructed or installed,

however pertinent records or monitoring equipment could be located away from the air contaminant source. The department also needs the authority to copy any record, or inspect any facility, equipment, practice or operation that is a requirement of or regulated under this chapter, a rule, or a permit issued under this chapter. In addition in order to ensure compliance with the provisions of this chapter or rule, order or permit issued under this chapter, the department must be allowed to sample or monitor substances or parameters.

Section 3. Under section 3 of the bill, the proposed amendment would delete language from section 75-2-413, MCA, that prevents the Department from recovering both a civil penalty and a criminal fine for the same violation. The statute now provides that a civil penalty is "in lieu of the criminal penalty provided for in 75-2-412."

The Department proposed this amendment as part of the Department's effort to obtain EPA approval of the Department's title V operating permit program since EPA identified the provision of section 75-2-413 as a potential barrier to approval of the state operating permit program. EPA requires that a state have the authority to recover both a civil penalty and a criminal fine for an intentional violation of the air quality laws.

Under section 75-2-412, MCA, of the Clean Air Act of Montana, the Department may institute a criminal action if a person "knowingly" violates the act or a rule, order or permit made or issued under the act or if a person knowingly makes a false material statement, representation or certification or knowingly

EXHIBIT NO. 1
DATE 1-9-95
BILL NO. SB-48

renders a required monitoring device or method inaccurate. . An offense is a misdemeanor subject to a fine of up to \$10,000 per violation and/or imprisonment for up to 2 years. Any fines must be deposited in the state general fund.

Section 75-2-413, MCA, does not require a showing of intent and provides authority for the Department to bring a civil action in state district court to recover a civil penalty of up to \$10,000 per violation. Like criminal fines, any civil penalty must also be deposited in the state general fund.

The purpose of a criminal fine, under the Clean Air Act, is punishment and deterrence. The purpose of a civil penalty is compensation to the state for environmental harm. Courts have ruled that recovery of both is appropriate for the same violation as long as the civil penalty assessed is not so disproportionate to the harm caused as to constitute punishment or deterrence rather than compensation. (See, e.g., U.S. v. Barnette, 10 F.3d 1553, 1558-1559 (11th Cir. 1994)).

Thank you for the opportunity to comment. I would be happy to answer any questions.

DATE JAN 9. 1995

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB 48, 46

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PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jeff Chaffee	Dept of Health / Env. Sciences	SB48	✓	
Tom Patten	MBMG - Butte	SB46	—	
DENNIS McKENNA	MBMG	SB46	✓	
Charles R. Brooks	Yellowstone Nat. Park	SB48	✓	
Mike Murphy	MWRA	SB46	✓	
Willa Hall	LWV	SB48		
Jim Hanger	GW Assessment Steering Committee	SB46		
Pam Bond		SB46		
Merrin Miller	MBMG - Butte	SB46	✓	
Tara Toles	DWR	SB46		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

**MINUTES
MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 20, 1995, at 1:00 pm

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Bill Wilson

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 50, HB 75
Executive Action: SB 48

{Tape: A; Side: 1}

HEARING ON HB 50

Opening Statement by Sponsor:

REP. DON LARSON, District 58, Seeley Lake, said HB 50 is a continuation of a bill that was introduced in the last session. That bill revised timber sales on state lands. HB 50 continues the state timber sale account and any amount appropriated from that account is replaced by an equal amount. In 1993 the Department of State Lands put up 19 million board feet of timber on state lands, and in 1994 they put up 30 million board feet.

REP. LARSON said HB 50 eliminates the requirement to put up a 20% bond, which prohibits smaller companies from bidding on those sales. As the timber supply diminishes, there are smaller sales

Closing by Sponsor:

REP. WISEMAN noted that there were also no opponents to HB 75 in the House. He said there is no reason to mishandle used oil because of the options available. If HB 75 is not passed and someone is caught mishandling used oils, they will be in federal court dealing with the federal bureaucracy. If HB 75 is passed, and there is a violation, they will be dealt with in state district court.

EXECUTIVE ACTION ON SB 48

Motion: SEN. KEATING MOVED SB 48 DO PASS

Substitute Motion: SEN. KEATING PRESENTED AMENDMENTS TO SB 48 AS CONTAINED IN EXHIBIT 6.

Discussion:

SEN. BROOKE asked SEN. KEATING how many 30 day extensions there could be, because it appeared there was only one extension in the original language. SEN. KEATING said the applicant can ask for more than one 30 day extension.

Vote: MOTION TO AMEND SB 48 AS AMENDED IN EXHIBIT 6, PASSED UNANIMOUSLY.

SEN. MIKE FOSTER reviewed his amendment to SB 48 as contained in EXHIBIT 7.

SEN. FOSTER said the state designed SB 48 to allow both civil and criminal penalties in order to be consistent with the EPA and Title 5. He stated that it should be limited to the operator permitting program, instead of the entire Clean Air Act of Montana.

SEN. CHRISTIAENS asked the department how they perceive the amendment. David Rusoff, Attorney, Department of Environmental Health, said the civil penalty in the Montana Clean Act arose out of their attempt to get approval of the Title 5 program from EPA. In 1993 EPA indicated the "in lieu of language" was a potential barrier to EPA approval of the Title 5 permit program. He said their initial concern would be if there was a protection problem. There could be two facilities committing the same violation and one could be under Title 5 and the other may not. The facility that would not be under the Title 5 program, would be subject to enforcement by EPA, because the state wouldn't have the authority to pursue a criminal penalty they would however be subject to a civil action by the state. Those facilities that are under Title 5, would be subject to both civil and criminal penalties. The courts would have to decide if there is a constitutional problem. If that language was removed, then the department would have the authority to impose a criminal and civil violation on a facility.

Mr. Rusoff said all facilities in the state should be treated the same way whether a criminal or civil penalty occurs. Another

concern is that the department may not know if a facility is subject to a penalty under Title 5. It wouldn't be clear whether a violation would be subject to a civil or criminal action.

SEN. CHRISTIAENS asked **Mr. Rusoff** if there would be a primacy problem if the amendment was adopted. **Mr. Rusoff** answered that he didn't think the EPA would disapprove primacy over the Title 5 program if the amendment was adopted. What could happen, would be the non-Title 5 facilities, which are small businesses, would be subject to a criminal action by EPA.

SEN. KEATING said Section 3 deals with 75-2-413, civil penalties. He asked **Mr. Rusoff** if that section applied to Title 3 of the Air Quality Act as well as Title 4 and Title 5. **Mr. Rusoff** clarified that Title 5 refers to the language in subchapter 5 of the Federal Clean Air Act. **SEN. KEATING** asked **Mr. Rusoff** if in Section 3 of the bill, with the deletion of "civil in lieu of criminal penalties", would apply to subchapter's 3, 4, and 5 equally. **Mr. Rusoff** replied that 75-2-413 is a provision of the state Air Quality Act which covers all violations.

SEN. KEATING said the proposed amendment says the change in Section 3 applies only to subchapter 5. **Mr. Rusoff** said there could be a hazardous waste violation that wouldn't be subject to subchapter 5, in which they would be immune from a criminal action by the state if a civil action had already been pursued. Whereas, a subchapter 5 penalty would be subject to both criminal and civil action by the state.

CHAIR. GROSFIELD asked **Mr. Rusoff** if criminal and civil penalties applied to everything in the state Air Quality Act. **Mr. Rusoff** replied that currently, both civil and criminal actions apply to all violations of the state Air Quality Act. **CHAIR. GROSFIELD** asked if that was also required by the federal Clean Air Act. **Mr. Rusoff** answered that he wasn't aware of any provision to that effect.

CHAIR. GROSFIELD said that the title of SB 48 talks about applicants for construction permits, etc. and revising certain provisions of the state Air Quality Act to conform with the Federal Clean Air Act. The amendment that is being considered by the committee is to restrict only a certain portion of the state Air Quality Act. He said the bill, without the proposed amendment, may not be consistent with the title of the bill, because that which has been struck on Line 25 goes beyond the title of the bill.

SEN. KEATING said that language is required by the federal Clean Air Act as it pertains to subchapter 5, and **SEN. FOSTER'S** amendment says, "The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by subchapter 5 of the federal Clean Air Act." **SEN. KEATING** asked if the amendment or the title of SB 48 needed to be changed.

CHAIR. GROSFIELD said SEN. FOSTER'S amendment conforms to the title of the bill.

Todd Everts, Environmental Quality Council, said there was an issue with the title of the bill. He asked the department to clarify, if by striking the language on Line 25 of Section 3, would that bring it into compliance with the federal requirements. Mr. Russoff replied that by striking that language it would bring that statute into compliance with the federal regulations. With SEN. FOSTER'S amendment that would restrict it to only subchapter 5 of the federal Clean Air Act.

Vote: MOTION TO AMEND SB 48 AS PER SEN. FOSTER'S AMENDMENT AS CONTAINED IN EXHIBIT 7, CARRIED UNANIMOUSLY.

Motion/Vote: SEN. KEATING MOVED TO ADOPT SB 48 AS AMENDED. MOTION CARRIED UNANIMOUSLY.

{Comments: This meeting recorded on one and one-half sixty minute tapes.}

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 23, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 48 (first reading copy -- white), respectfully report that SB 48 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 3, line 4.

Strike: "An additional"

Insert: "Additional"

2. Page 3, line 5.

Strike: "extension"

Insert: "extensions"

3. Page 3, line 30.

Following: "is"

Strike: "being"

Following: "conducted"

Insert: ", such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored"

4. Page 4, line 2.

Following: "chapter"

Insert: ", for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place, except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites"

5. Page 4, line 17.

Following: line 16

Insert: "(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection."

6. Page 4, line 25.



Amd. Coord.
Sec. of Senate

191244SC.SPV

Following: "~~75-2-412.~~"

Insert: "The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act."

-END-

DATE _____

1-20-95

SEN



HOUSE NATURAL RESOURCES

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0541	WENNEMAR, KENNETH		REDEFINE PIPELINES SUBJECT TO MMFSA				
	2/13		CANCELLED		VOTE:		
HJ0010	KNOX, DICK		INTERIM STUDY OF NATURAL RESOURCE COMPLIANCE AND ENFORCEMENT PROGRAMS				
	1/17	1/23	PASS AS AMENDED	2-1	VOTE: 17-1		2/02
HJ0022	TASH, BILL		JR URGING DHES TO ADOPT AN AIR QUALITY RULE FOR MINOR CHANGES IN PERMITS				
	2/11	2/15	PASS AS AMENDED	2/17	VOTE: 15-3		2/17
HJ0024	HARPER, HAL		STREAMSIDE CORRIDOR PROTECTION -- CONSENSUS GROUP				
	2/14	2/15	PASS AS AMENDED	2/15	VOTE: 15-3		2/17
HJ0025	QUILICI, JOE		SUPPORT TECHNOLOGY FOR MINE WASTE IN BUTTE				
	2/16	2/17	DO PASS	2/17	VOTE: 18-0		2/17
HJ0029	OHS, KARL		STATE LANDS INTERIM STUDY				
	3/17	3/22	CANCELLED		VOTE:		
SB0046	SWYSGOOD, CHUCK		GROUND WATER ASSESSMENT AND MONITORING PROGRAM FUNDING				
	1/20	1/27	CONCUR	1/27	VOTE: 17-0		1/30
SB0048	KEATING, TOM		AN ACT AMENDING CERTAIN PROVISIONS OF THE MONTANA CLEAN AIR ACT				
	1/27	2/08	CONCUR	2/10	VOTE: 15-3		2/13
SB0071	STANG, BARRY		REVISING THE PETROLEUM TANK RELEASE CLEAN UP LAWS				
	1/23	1/27	CONCUR AS AMENDED	1/27	VOTE: 17-0		1/30
SB0078	GROSFIELD, LORENTS		WATER QUALITY PERMIT ENFORCEMENT, FEE, AND BONDING REVISIONS				
	2/06	3/03	CONCUR AS AMENDED	3/6	VOTE: 17-0		3/07
SB0122	TOEWS, DARYL		REVISE PROCESS OF GRANTING RIGHT-OF-WAY EASEMENTS ON STATE LANDS				
	2/06	3/06	CONCUR AS AMENDED	3/6	VOTE: 17-0		3/07
SB0147	HERTEL, JOHN		STATE WATER PROJECT LAW REVISIONS				
	2/15	3/03	CONCUR AS AMENDED	3/8	VOTE: 17-1		3/09

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on February 8, 1995,
at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 48, HB 350, HB 351, HB 411, HB 412
Executive Action: HB 381

Tape 1, Side A

REP. ELLINGSON asked Mr. Schramm if either of the two bills is passed out of the committee establishing procedures for the sale of university land, if those procedures would also apply to any land that was owned by the foundation. Mr. Schramm said bills do not apply to the land owned by the foundation. REP. ELLINGSON said the university transferred land at Ft. Missoula to the foundation for purposes that he wasn't sure he understood but thought that HB 351 would prohibit that kind of transaction unless it got fair market value for the land from the foundation and met the other requirements. He asked Mr. Schramm if that was his interpretation. Mr. Schramm agreed. REP. ELLINGSON asked Mr. Schramm to summarize why he thought it was better for the Board of Regents to have the authority to be the lead agency in selling land as provided in HB 351 as opposed to the Board of Land Commissioners under HB 350. Mr. Schramm said he would be happy to delegate the selling of land to DSL because it is a headache. The determination of what piece of university land should be sold or retained should be made by the university system.

Closing by Sponsor;

REP. PECK said if both bills were passed it would be confusing. He asked the committee to seriously consider HB 350.

Tape 3, Side A

HEARING ON SB 48

Opening Statement by Sponsor:

SENATOR TOM KEATING, Senate District 5, Billings, said SB 48 was requested by the Department of Health and Environmental Sciences, Air Quality Division. SB 48 makes changes to the department's air quality permitting and enforcement authority as a result of problems identified by the legislative auditor during a performance audit and through a review by EPA.

Proponents' Testimony:

Jeff Chaffee, Department of Health and Environmental Sciences, Air Quality Division (DHES). Written testimony. EXHIBIT 7

Tom Ebzery, Attorney, Billings. Written testimony. EXHIBIT 8

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DOUG WAGNER asked Mr. Chaffee if SB 48 was directed specifically towards industry or does it also include cities and towns. Mr. Chaffee said the department's permitting authority does not affect cities and towns.

CHAIRMAN KNOX asked Mr. Chaffee about the need for criminal and civil penalties. Mr. Chaffee said EPA has identified the joint criminal-civil authority as a potential flaw in the state law about the department receiving the primacy for the state operating permit program under Title 5 of the Federal Clean Air Act.

Closing by Sponsor:

SENATOR KEATING closed.

Tape 3, Side B

HEARING ON HB 411

Opening Statement by Sponsor:

REP. SCOTT ORR, House District 82, Libby, said HB 411 is about activities concerning the stream beds in the State of Montana. The U. S. Army Corps of Engineers issued a list of 40 stream bed activities that they thought should have blanket exclusions from the permitting process. In January 1992 the Department of Health and Environmental Sciences (DHES) agreed with all of the exclusions except four. The four were utility line backfill and bedding, bank stabilization, returning water from upland disposal areas and headwaters and isolated waters discharges. The purpose of the bill is to end the duplication process that is involved with those four exclusions. All 40 exclusions should be adopted.

Proponents' Testimony:

John Fitzpatrick, Director, Community and Governmental Affairs, Pegasus Gold Corporation, said any one who wants to excavate or fill a stream channel must have a 404 permit. The big permits are referred to as 404 permits. There are small permits that are referred to as nationwide permits. Federal law provides an opportunity for states to review the nationwide permits. Montana waived the right to review nationwide permit applications until 1991. Out of the 40 potential categories that the state could review, it reviewed four. The Department of Health and Environmental Sciences (DHES) sometimes requires three or four permits for the same facility which is unnecessary. DHES has several other opportunities to review mining opportunities. The State of Montana should step back and allow the Corps of Engineers to run that program on its own. Water quality is not

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

TESTIMONY ON SENATE BILL NO. 48

EXHIBIT 7
DATE 2-8-95
SB 48

Jeffrey T. Chaffee
Air Quality Division
Department of Health and Environmental Sciences

Mr. Chairman, members of the committee, my name is Jeff Chaffee and I represent the Department of Health and Environmental Sciences. SB 48 makes changes to the department's air quality permitting and enforcement authority to remedy some of the problems identified by the legislative auditor during a performance audit and EPA through review of Montana's operating permit program.

The changes include: extending the 60-day criteria for issuing a department determination; amending the inspection statute to provide for the right of entry to any premises in which required records are located, the right to copy records and the right to inspect monitoring equipment and methods and to sample emissions; and deleting the "in lieu of" language in the civil penalty statute.

Section 1. The proposed amendment to 75-2-211 addresses a recommendation of the Legislative Auditor's performance audit of the Air Quality Bureau. The legislative auditor identified that the department needed to address the following problem: Once the department issues a preliminary determination (PD) to the applicant which specifies intended air quality permit conditions and requirements, there is a 15-day response period for comments on the PD. If no comments are received, a department determination (DD) which finalizes the permit conditions and requirements is issued. The department has 60 days from the receipt of a complete

application to issue the DD. If there are disagreements on the conditions and requirements in the PD, the department attempts to negotiate and resolve the issues prior to the 60-day milestone since once the DD is issued the only recourse for the applicant is an appeal to the Board of Health and Environmental Sciences. However in some instances the department is unable to resolve the issues within the mandated time period but because legitimate negotiation activities are taking place and it is in the interest of all parties to continue the negotiation and not appeal to the Board, the 60-day time period is missed. The AQD is adding language to provide for a mutually agreed upon 30-day extension to the current 60-day criteria for issuing a department determination with additional 30-day extensions granted upon request of the applicant. The Air Quality Division met with the Clean Air Act Advisory Council (CAAC), a group comprised of regulated industry, environmental groups, small business and the general public, to discuss this legislative change on November 3, 1994. Everyone agreed this was necessary.

Amendments were added in the Senate to clarify that the department may grant as many extensions as the applicant requests.

Section 2. In order to receive EPA's approval of the state's operating permit program, and maintain primacy for air quality activities in the state, section 75-2-403 needs to be amended. The changes to 75-2-403 are necessary to allow the department to determine that the source is in compliance with all applicable requirements and provide the department, or an authorized

representative, access to information required under this chapter, or a rule, order or permit issued under this chapter. Currently the state statute provides only for inspections where an air contaminant source is located or being constructed or installed, however pertinent records or monitoring equipment could be located away from the air contaminant source. The department also needs the authority to copy any record, or inspect any facility, equipment, practice or operation that is a requirement of or regulated under this chapter, a rule, or a permit issued under this chapter. In addition in order to ensure compliance with the provisions of this chapter or rule, order or permit issued under this chapter, the department must be allowed to sample or monitor substances or parameters.

Subsequent to a Clean Air Act Advisory Committee meeting on January 12, 1995, amendments were added in the Senate to the federal language to better define an emissions-related activity, to clarify that if records are kept off-site only the records can be inspected and not the facility in which they are housed, and to require that inspections must be conducted in compliance with a facility's workplace safety rules.

Section 3. Under section 3 of the bill, the proposed amendment would delete language from section 75-2-413, MCA, that prevents the Department from recovering both a civil penalty and a criminal fine for the same violation. The statute now provides that a civil penalty is "in lieu of the criminal penalty provided for in 75-2-412."

The Department proposed this amendment as part of the Department's effort to obtain EPA approval of the Department's Title V operating permit program since EPA identified the provision of section 75-2-413 as a potential barrier to approval of the state operating permit program. EPA requires that a state have the authority to recover both a civil penalty and a criminal fine for an intentional violation of the air quality laws.

Under section 75-2-412, MCA, of the Clean Air Act of Montana, the Department may institute a criminal action if a person "knowingly" violates the act or a rule, order or permit made or issued under the act or if a person knowingly makes a false material statement, representation or certification or knowingly renders a required monitoring device or method inaccurate. An offense is a misdemeanor subject to a fine of up to \$10,000 per violation and/or imprisonment for up to 2 years. Any fines must be deposited in the state general fund.

Section 75-2-413, MCA, does not require a showing of intent and provides authority for the Department to bring a civil action in state district court to recover a civil penalty of up to \$10,000 per violation. Like criminal fines, any civil penalty must also be deposited in the state general fund.

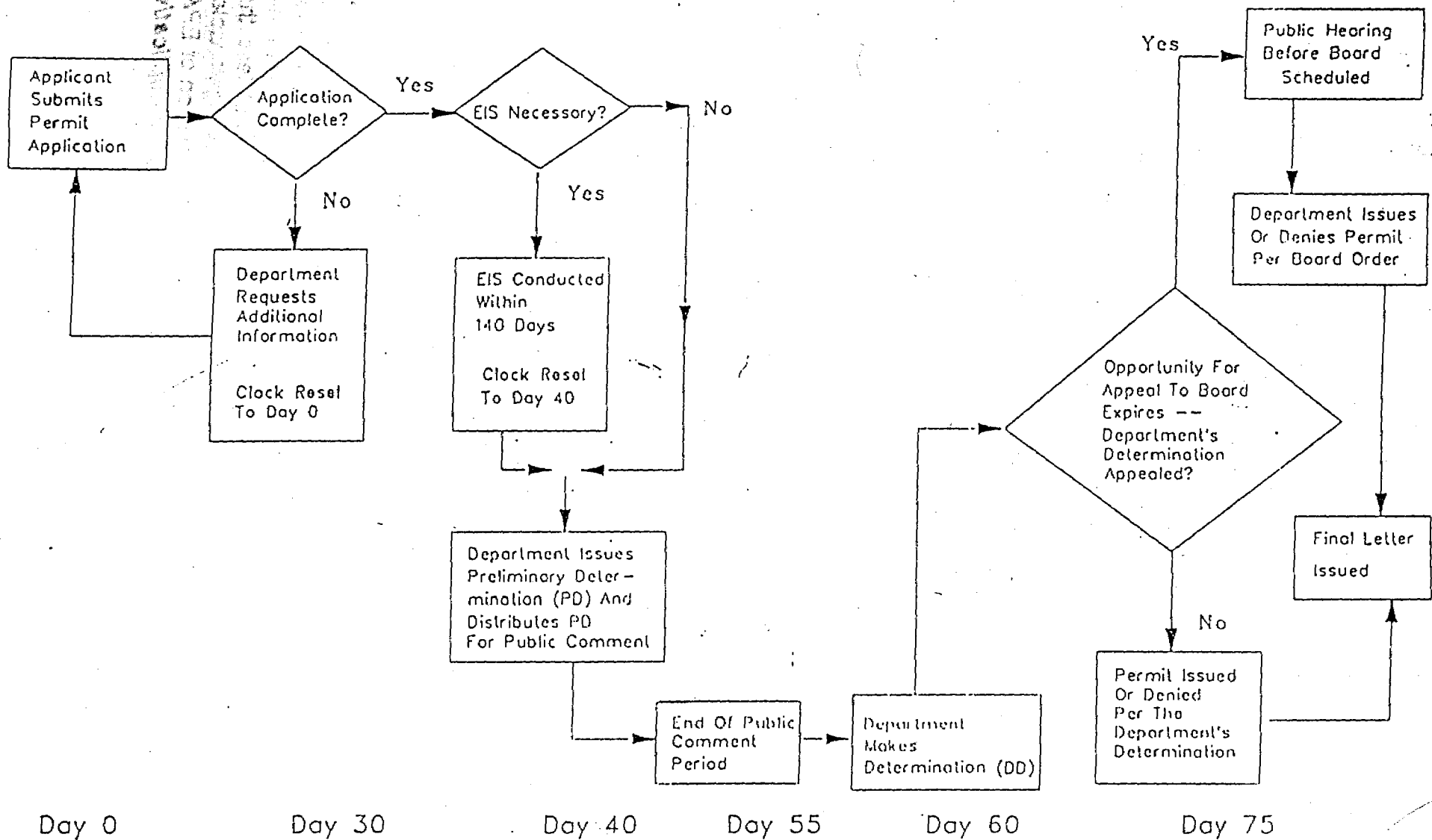
The purpose of a criminal fine, under the Clean Air Act, is punishment and deterrence. The purpose of a civil penalty is compensation to the state for environmental harm. Courts have ruled that recovery of both is appropriate for the same violation as long as the civil penalty assessed is not so disproportionate to the harm caused as to constitute punishment or deterrence rather

than compensation. (See, e.g., U.S. v. Barnette, 10 F.3d 1553, 1558-1559 (11th Cir. 1994)).

An amendment was added in the Senate which provides that a civil penalty and criminal penalty can be collected only for violations of the operating permit program required by the federal clean air act.

Thank you for the opportunity to comment. I would be happy to answer any questions.

Montana Department of Health and Environmental Sciences
Air Quality Bureau
AIR QUALITY PERMIT PROCESS FLOW CHART



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REFINING ENVIRONMENT HEALTH

DAVID J. BERTOCH
COUNSEL

EXHIBIT 8

DATE 2-8-95

SB 48

February 3, 1995

RE: SB 48 -- AQD Proposed Amendment
to MCA 75-2-413

BY FAX

Thomas E. Ebzery, Esq.
Attorney at Law
c/o US West
P O Box 1716
Helena, Montana 59624

Dear Tom:

Per your request, I have reviewed the EPA's Title V State Operating Permit Program regulations at 40 CFR §70.11. It is my understanding that AQD staff (Jan Sensibaugh) has cited this regulation as justification for their proposed amendment to MCA 75-2-413. That section of the code as presently written prohibits the state from imposing a criminal penalty once a civil penalty has been assessed for a violation of Montana's air quality laws.

As I understand it, AQD's position is that they must have authority to seek **both** civil and criminal penalties **simultaneously** for an alleged violation of Montana's air quality laws in order for the state's operating permit program to be approved by EPA. Based on my reading of the cited regulation and my knowledge of EPA's comments and findings to date on the state's proposed program, I find AQD's position insupportable. Briefly, my reasoning is as follows:

- 40 CFR §70.11 merely lists the enforcement **options** that must be available to a state agency in order to meet EPA's enforcement criteria. Under the regulation the state's enforcement remedies must include the following **options**: (1) power to seek injunctive relief; (2) power to assess civil penalties in a maximum amount of not less than \$10,000 per day per violation without regard to mental state of the violator; and (3) power to seek criminal remedies, including fines in a maximum amount of not less than \$10,000 per day per violation, against persons who "knowingly" violate regulatory requirements. There is no express or implied provision of EPA's regulatory requirements for enforcement authority that mandates **duplicative**

civil and criminal penalties for the same violation. *In short, 40 CFR §70.11 does not require the state to have the authority to impose both civil and criminal penalties simultaneously for an alleged violation of the operating permit program.*

- While EPA may not like the current version of MCA 75-2-413, it has nevertheless, repeatedly approved numerous Montana federally delegated air quality programs that rely on or have incorporated the enforcement provisions of the Montana Air Quality Act, including MCA 75-2-413. It seems inconceivable that they would now refuse to approve another federally mandated program based solely on this existing state law.
- There is no real need to impose *duplicative* civil and criminal penalties for the same violation to achieve the desired deterrent effect. It is well recognized that the underlying principle of both criminal fines and civil penalties in federal environmental laws is to *deter and punish* violators. The only difference between an action for civil penalties and one for criminal fines is the burden of proof. The amount of civil penalties and criminal fines required under 40 CFR §70.11 are the same, i.e., a maximum of not less than \$10,000 per violation per day. MCA 75-2-413 does not deny the state the deterrent effect of penalties, it merely requires AQD to choose the most appropriate remedy.
- As presently worded, SB 48 appears to restrict *duplicative* civil and criminal penalties solely to the operating permit program, i.e., duplicative penalties would be the exception under Montana's air quality laws. However, given the nature of the operating permit program it is more likely that the exception would become the rule for permitted facilities. As presently structured, the operating permit program merely incorporates into a single permit, all applicable regulatory requirements. For a permitted facility, the operating permit program represents the sum total of all air quality laws and rules. Thus, AQD would likely argue that it could seek *duplicative* civil and criminal penalties for any violation of air quality laws by a permitted facility.

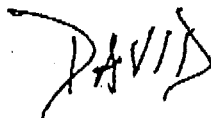
In conclusion then, the existing enforcement provisions of Montana's Air Quality Act (MCA Title 75 Chapter 2, Part 4), including MCA 75-2-413, are adequate to ensure compliance with all aspects of the Act. There has been no demonstration to the contrary by AQD or EPA. The enforcement provisions of Part 4 adequately meet the requirements of EPA's Title V, State Operating Permit Program regulations, including the requirements of 40 CFR §70.11. There is no need to amend existing law to require *duplicative* penalties.

Finally, I cannot conceive of any public policy reason to justify putting a company or individual to the considerable expense of time and financial resources, not to mention

disruption of business and personal life, that would result from having to defend oneself twice for the same alleged violative conduct.

I would be happy to discuss this issue further with you or representatives of the Air Quality Division. Do not hesitate to contact me if you or they have any questions.

Sincerely,

A handwritten signature in black ink that reads "DAVID". The letters are stylized and connected, with a long horizontal stroke extending from the end of the word.

David J. Bertoch

c: S. P. Hart
T. A. Nelson

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 48
 DATE 2-8-95 SPONSOR(S) Sen. Leating

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Maureen Cleary-Schwinder	WIFE	SB48		
Jeff Claffee	AKES - Air Quality Division	SB48		✓
Gael Abernethy	MT Petroleum 93 SN			✓
Tom Etzery	EXXON SUPPORT W/ AMEND.	SB48		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman on February 10, 1995,
at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 203, HB 403
Executive Action: HB 338 DO PASS AS AMENDED
HB 351 DO PASS AS AMENDED
HB 350 TABLED
SB 48 DO CONCUR
HB 411 DO PASS

Tape 1, Side A

EXECUTIVE ACTION ON HB 338

Motion: REP. SCOTT ORR MOVED HB 338 DO PASS.

Motion/Vote: REP. CLIFF TREXLER MOVED AN AMENDMENT TO HB 338. EXHIBIT 17. Voice vote was taken. Motion to adopt the Trexler amendment carried 14 to 3. REP. EWER, REP TUSS and REP. ELLINGSON voted no.

Motion/Vote: REP. ORR MOVED HB 338 DO PASS AS AMENDED. Roll call vote was taken. Motion carried 10 to 7.

Tape 4, Side B

EXECUTIVE ACTION ON HB 351

Motion: REP. HAL HARPER MOVED LEROY SCHRAMM'S AMENDMENT THAT ALLOWS MINERAL RIGHTS TO BE TRANSFERRED WHEN LAND IS SOLD.

Discussion:

REP. HARPER asked John North, Attorney, Department of State Lands if the law that prohibits transferring mineral rights applies to lands owned by federal, state or local governments. Mr. North said Title 77 where the law is found, would not apply to these lands.

Vote: Voice vote was taken. Motion to adopt the Schramm amendment carried unanimously.

Motion/Vote: REP. HARPER MOVED HB 351 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 350:

Motion/Vote: REP. ROBERT STORY MOVED TO TABLE HB 350. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON SB 48

Motion/Vote: REP. TREXLER MOVED SB 48 BE CONCURRED IN. Voice vote was taken. Motion carried 15 to 3. REP. SLITER, REP. WAGNER AND REP. CURTISS voted no.

EXECUTIVE ACTION ON HB 411

Motion: REP. SCOTT ORR MOVED HB 411 DO PASS.



HOUSE STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 48 (third reading copy -- blue) be concurred in.

Signed: _____

Dick Knox
Dick Knox, Chair

Carried by: Rep. Knox

Committee Vote:

Yes 15, No 3

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